

To: Transportation Interim Committee  
From: Joe Carroll, Staff Attorney  
Date: May 5, 2022

Re: Charging station liability

### **I. Liability overview:**

Generally, a claim for liability requires a plaintiff to prove:

1. *Duty*—that the defendant had a duty towards the plaintiff;
2. *Breach*—that the defendant breached the duty;
3. *Causation*—that the breach caused the plaintiff damages; and
4. *Damages*—what those damages are.<sup>1</sup>

### **II. State liability:**

The state of Montana and its political subdivisions can be sued for liability pursuant to

Article II, section 18, of the Montana Constitution:

**State subject to suit.** The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a 2/3 vote of each house of the legislature.<sup>2</sup>

The Legislature has provided for immunity for certain actions,<sup>3</sup> but none appear relevant to electric vehicle charging stations on state property except for immunity "from exemplary and punitive damages,"<sup>4</sup> and the limitation on damages to "\$750,000 for each claim and \$1.5 million for each occurrence."<sup>5</sup>

### **III. Charging station liability:**

Because the popular use of electric vehicles is so new, many questions about legal liability remain unanswered. Attorney Jaclyne Reive suggests that some of the outstanding issues include whether product liability warranties will "extend all the way through the retail chain to

---

<sup>1</sup> See generally *Pretty On Top v. Hardin*, 182 Mont. 311 (1979).

<sup>2</sup> Art. II, Sec. 18, Montana Constitution.

<sup>3</sup> See 2-9-111 through 2-9-114, MCA; 2-9-902, MCA; 10-3-111, MCA; 44-3-401, MCA; and 76-16-319, MCA.

<sup>4</sup> 2-9-105, MCA.

<sup>5</sup> 2-9-108, MCA.

the charging equipment's end user," and whether charging an electric vehicle will be considered part of its normal use such that vehicle insurance covers the action.<sup>6</sup>

The Alternative Fuel Data Center (AFDC) at the U.S. Department of Energy notes that some employers providing work-place chargers "require their EV-driving employees to . . . stipulate, among other things, that the employee accepts responsibility for any risks associated with use of the workplace charging stations."<sup>7</sup> Regarding operation of a charging station, the AFDC notes that:

While routine charging infrastructure maintenance can be minimal, repairing broken chargers can be costly if they are no longer under warranty. Therefore, it is important to establish responsibility for maintenance costs and determine if the site host, charging network, or installer is responsible.<sup>8</sup>

#### **IV. State liability for charging stations:**

In the event that a person is injured or the person's property is damaged by an electric vehicle charging station on state property, the person would need to prove that the state had a duty to the person and breached that duty, prove that the breach caused the person damages, and prove what those damages are.

A person may be able to prove the existence of a duty because the Montana Supreme Court has "consistently held, as a matter of law in premise liability cases, that property owners owe a general duty of ordinary care to have their premises reasonably safe and to warn of any hidden or lurking dangers."<sup>9</sup> Proving breach, causation, and damages will depend on the facts of the situation. Damages should be limited to \$750,000 per claim and \$1.5 million per incident,

---

<sup>6</sup> Jaclyne Reive, *Understand legal, insurance risks of electric vehicle chargers*, Nov. 29, 2021, trucknews.com, <https://www.trucknews.com/blogs/understand-legal-insurance-risks-of-electric-vehicle-chargers/>.

<sup>7</sup> *Workplace Charging for Electric Vehicles*, Alternative Fuels Data Center, afdc.energy.gov, [https://afdc.energy.gov/fuels/electricity\\_charging\\_workplace.html](https://afdc.energy.gov/fuels/electricity_charging_workplace.html).

<sup>8</sup> *Charging Infrastructure Operation and Maintenance*, Alternative Fuels Data Center, afdc.energy.gov, [https://afdc.energy.gov/fuels/electricity\\_infrastructure\\_maintenance\\_and\\_operation.html](https://afdc.energy.gov/fuels/electricity_infrastructure_maintenance_and_operation.html).

<sup>9</sup> See *Richardson v. Corvallis Pub. Sch. Dist. No. 1*, 286 Mont. 309, at 318 (1997).

pursuant to 2-9-108, MCA. Exemplary and punitive damages should not be awarded, pursuant to 2-9-105, MCA.

To mitigate liability, the Legislature might consider, among other things, what:

- warranties, indemnities, or insurance requirements should apply to charging stations as a condition for operation;
- regulatory oversight of charging stations may be necessary;
- risks users of charging stations should accept as a condition for use; and
- aspects of charging an electric vehicle should be considered part of the ordinary use of the vehicle.

New laws or administrative rules might be used to effect such considerations.

The Legislature may also consider establishing immunity from suit, which would require a 2/3 vote of each house of the legislature, pursuant to Article II, section 18, of the Montana Constitution.